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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,582	01/23/2002	Dennis P. Silver	11899	7015

26637 7590 08/14/2003

INTELLECTUAL PROPERTY LAW DEPARTMENT CASE LLC  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/055,582

Applicant(s)

SILVER, DENNIS P.

Examiner

Árpád Fábíán Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/22/03, 8/5/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4-5 are objected to because of the following informalities: it is unclear why of marking of an "a)" paragraph is shown, since there are no other paragraph in the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the outside edge" in ln. 4. There is insufficient antecedent basis for this limitation in the claim.

In re claim 9, the "a first segment and a second segment" already recited in claim 6, while "said plurality of segments" lacks antecedent basis; the claim is indefinite/unclear.

In re claim 11, recites the limitation "said first hinged joint" in ln. 5. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, this limitation will treated as the hinged joint introduced in claim 6.

In re claims 12, 14, while claim 6 (parent claim) recites features specific to the embodiment represented in fig. 1, 5, claims 12 and 14 pertains to an embodiment not

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capable of performing the embodiment of the parent claim 6. These claims will not be treated on their merit.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool (3825138).

In re independent claims 1 & 6, Pool discloses the claimed invention as disclosed and outlined in the marked up drawings shown below, it is noted however that claim 6 does not have "substantially vertical infeed section coupled to the first segment";

In re claim 4, when one of the segment is in the storage position grain is inherently prevented from accidentally released through an open end thereof (for example, the augers are not operating during storage, but other known means can prevent the accidental release);

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Storage bin of a combine (cl. 6); wherein the storage bin defines an upper surface, and wherein the horizontal section is in communication with the upper surface (cl. 16)

Auger exit (cl. 15)

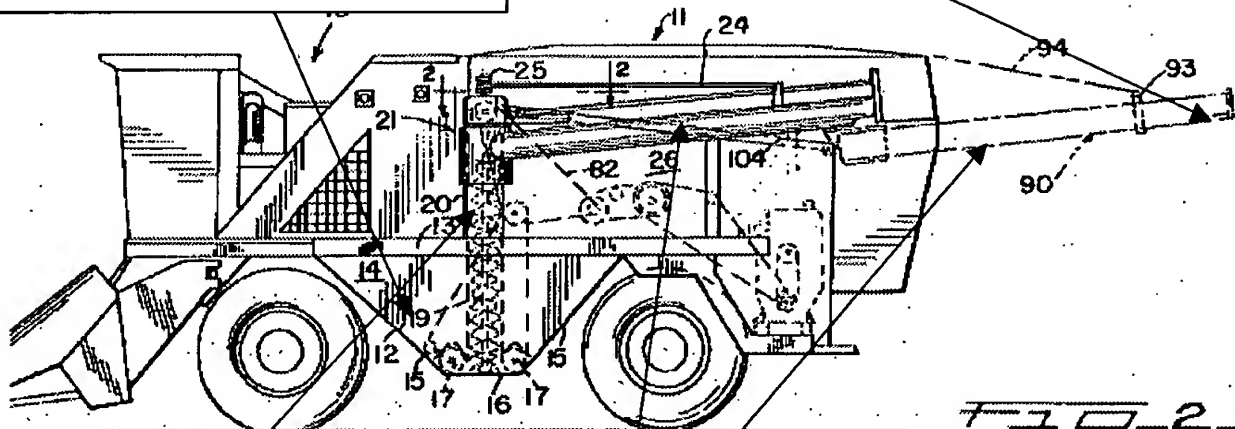


FIG. 2

Substantially vertical infeed section coupled to the first segment (cl. 1)

Substantially horizontally positioned first and second segments of an unloading outfeed auger section, parallel to the combine's longitudinal axis in storage & unloading positions (cl. 1) and manually movable with respect to the storage bin (cl. 6 & 8)

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Pool discloses the claimed device except for coupling the first & second segments in a side by side arrangement when in storage by using a hinged connection which can be moved into position by any well known means such as a hydraulic actuator connected between the two segments as claimed.

Meharry discloses that it is known in the art to provide a foldable long auger to provide more safety when the storage bin mechanism moved from place to place (i.e. the second segment is in storage position) (col. 1, ln 34, 70-71), as shown in fig 2, the second segment is folded via the hinge (17) to an outer side of the first segment auger with any well known actuator, such as hydraulic actuator.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first auger of Pool with the teachings of hinged second auger (replacing Pool's second auger segment), in order to provide a foldable long auger to provide more safety when the storage bin mechanism moved from place to place (i.e. the second segment is in storage position) (col. 1, ln 34, 70-71).

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-6, 8-16 have been considered but are moot in view of the new ground(s) of rejection.

Examiner noted Applicant's amendment of the drawing, where it appears to informally add a hydraulic actuator between the first and second segments.

Considering that to one skilled in the art at the time of the invention would use a hydraulic actuator to assist in moving the second segment into storage/unloading position(s), the Examiner in view of obviousness accepts the drawing change.

The two amendments filed after the first Office Action, however required further search and examination. The rejection presented above overcomes the amended claims.

Examiner further notes that Applicant's assumption that claims 1-5 are allowable (which statement the Examiner did not make) and should be formally allowed is not accurate and is not granted in view of the rejection presented above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hansen, Erickson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9325/6 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.



Árpád Fábián Kovács  
Primary Examiner  
Art Unit 3671

ÁFK  
August 8, 2003